JACK J. GRYNBERG

IBLA 85-28 Decided September 19, 1985

Appeal from decision of the Director, Bureau of Land Management, denying approval of the proposed Steer Unit, Montrose County, Colorado (MMS-174-O&G).

Dismissed.

1. Oil and Gas Leases: Suspension -- Oil and Gas Leases: Unit and Cooperative Agreements -- Rules of Practice: Appeals: Dismissal

An appeal to the Board of Land Appeals of a decision by the Director, Bureau of Land Management, affirming a regional conservation manager's decision not to approve a unit agreement will be dismissed as moot where the noncompetitive oil and gas leases proposed for inclusion in the unit have expired by the running of their primary terms without benefit of development or production. Delays by the Department in considering an appeal pursuant to 30 CFR Part 290 of the conservation manager's decision do not constitute a de facto suspension of the oil and gas leases proposed for the unit which would extend the leases.

APPEARANCES: Stephen J. Sullivan, Esq., Denver, Colorado, for Jack J. Grynberg; Lyle K. Rising, Esq., Rocky Mountain Regional Solicitor's Office, Department of the Interior.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

In 1980, the Steer Unit plan was proposed for exploration and development of an unproven oil and gas field in Montrose County, Colorado. Following preliminary approval of the plan by the Geological Survey (Survey), a unit agreement was drafted in February 1980 to encompass 23,203.55 acres of public and private lands. A copy of the executed unit agreement for the proposed Steer Unit was presented to Survey on May 8, 1980, for final approval. By decision dated June 24, 1980, the Acting Deputy Conservation Manager, South Central Region, Survey, denied approval of the Steer Unit agreement for the stated reason that the documents lacked evidence of sufficient participation in the unit to afford effective control of operations in the unit area. The following explanation was included:

> The proposed unit area contains 23,203.55 acres, more or less, of which 22,757.99 acres are Federal lands and 445.76 acres

are patented lands. Of this acreage, you have obtained the following commitment: 5 percent effectively or fully committed, 11.7 percent unleased Federal, and 83.3 percent not committed.

The group responsible for preparing the draft unit plan and pursuing approval, Jack Grynberg & Associates, appealed the decision to the Director, Survey, pursuant to 30 CFR Part 290 (1980). 1/ This group argued that 100 percent control of the working interests in each lease was not required and asserted those parties ratifying the agreement controlled sufficient interests to ensure effective control of operations on all but two smaller tracts. They specifically challenged the decision to characterize as "uncommitted" 17,957.72 acres of Federally leased land where the unit agreement was ratified by owners of 87.5 percent of the working interest and to similarly characterize 960 acres where 93.5 percent of the working interest owners had ratified. The 17,957.72 acres identified are covered by 27 leases where either Jack or Celeste Grynberg controls 87.5 percent of the working interest and Amcan Producers, Inc., controls the remaining 12.5 percent. The lease for 960 acres is controlled 50 percent by Ann K. Lenway, 43.75 percent by Jack Grynberg, and 6.25 percent by Amcan Producers. Amcan Producers would not ratify the unit agreement. Two additional requests by the group were included in the appeal: (1) suspension of all Federal oil and gas leases within the proposed unit area which would terminate during pendency of the appeal, and (2) forced joinder of parties not ratifying the agreement. The Conservation Manager, Central Region, Survey, separately reviewed and denied the two latter requests in a decision dated July 21, 1980. That decision was also appealed by Jack Grynberg and Associates pursuant to 30 CFR Part 290 (1980).

By Secretarial Order, 47 FR 4751 (Feb. 2, 1982), responsibility for review of appeals pursuant to 30 CFR Part 290 and other Survey functions relating to mineral resources were transferred to Minerals Management Service (MMS). The record indicates review of the case was begun by MMS, but before a decision was made, MMS' responsibility for resource management was transferred to the Bureau of Land Management (BLM), by Secretarial Order 3087, 48 FR 8982 (Mar. 3, 1983). By decision dated July 30, 1984, the Director, BLM affirmed denial of the proposed Steer Unit agreement. Quoting from the Survey manual, now codified in the BLM Manual, 2/ the

1/ 30 CFR Part 290 (1980) contains rules and procedures for an appeal to the Director, Survey, from final orders or decisions relating to issues of mineral management. See 30 CFR 290.1 (1984) (MMS). A final decision of the Director may be appealed to the Board of Land Appeals. 30 CFR 290.7.

2/ The Survey Manual provision relied upon by the Director, R29 - CDM 645.1.3FF, provided in part: "(4) Not Committed (NC) -- any tract in which a working interest has not committed, regardless of other committed interest, is considered as not committed and is not subject to the Unit Agreement." This provision is interpreted to mean that where only a portion of the undivided working interest in an oil and gas lease covering a particular tract within a unit is committed, the entire tract may be treated as not committed to the unit agreement. See Coors Energy Co., 82 IBLA 212 (1984). The current version of this manual provision is now found in the BLM Manual at H-3180-1.II.C.4, and states: "All lessees of record and working interest owners for each Federal/Indian tract must submit a ratification and joinder before the tract is considered fully committed."

Director concluded Survey correctly determined a tract is not effectively committed unless all interest owners, except overrides, sign the agreement. The parties signatory to the Steer Unit agreement, the Director held, did not possess sufficient interests in the unit area to give reasonably effective control as defined by Department guidelines. The Director also refused to overturn Survey's decision not to compel the nonratifying parties to join the proposed unit.

Jack J. Grynberg, an individual member of the group pursuing approval, has appealed the Director's July 30, 1984, decision. In his statement of reasons, Grynberg argues the Department's regulations do not require all working interest owners to ratify the unit agreement where the signatories hold sufficient interests to provide reasonably effective control of operations. He claims 88.19 percent of the overall working interest is committed to the proposed unit and asserts such interest represents sufficient control under the regulations. In addition, appellant protests the declared termination of any Federal oil and gas lease within the proposed unit area, arguing that all Federal leases to be included in the unit were held in suspension during the pendency of the appeal process. BLM has moved for dismissal of the appeal as moot on the grounds that the noncompetitive oil and gas leases held by Grynberg and others which were to comprise the major portion of the proposed unit have expired by operation of law. 3/

[1] Section 17(e) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(e) (1982), establishes the primary term for a noncompetitive oil and gas lease at 10 years. See also 43 CFR 3110.1-1. A lease term may be extended after its primary term provided oil or gas is produced in paying quantities. 30 U.S.C. § 226(e) (1982); 43 CFR 3107.2-1. Extension of an individual lease may also be accomplished where it is committed to a unit plan of operation for an oil or gas field for which production is obtained

3/ The federal leases included within the proposed unit area and respective expiration dates are identified in the record (Feb. 18, 1980 proposal letter) as follows: C-10199 (Feb. 29, 1980); C-10362 (Apr. 30, 1980); C-10788 (May 31, 1980); C-10789 (May 31, 1980); C-10791 (Apr. 30, 1980); C-10791-A (Apr. 30, 1980); C-11093 (June 30, 1980); C-11496 (Oct. 31, 1980); C-11908 (Nov. 30, 1980); C-12089 (Jan. 31, 1981); C-12461 (Mar. 31, 1981); C-13050 (June 30, 1981); C-13053 (June 30, 1981); C-14879 (Jan. 31, 1982); C-14880 (Jan. 31, 1982); C-15386 (Feb. 28, 1982); C-16010 (Apr. 30, 1982); C-16011 (Apr. 30, 1982); C-16012 (Apr. 30, 1982); C-16337 (June 30, 1982); C-16339 (July 31, 1982); C-16343 (June 30, 1982); C-16867 (Oct. 31, 1982); C-16872 (Sept. 30, 1982); C-17055 (Oct. 31, 1982); C-17149 (May 31, 1983); C-17150 (Sept. 30, 1983); C-17152 (June 1, 1983); C-19016 (Dec. 31, 1983); C-19979 (Apr. 30, 1984); C-21138 (June 30, 1984); C-21776 (June 30, 1981); C-21777 (Apr. 30, 1982); C-21781 (May 31, 1983); C-22422 (Apr. 30, 1985). Both an undated exhibit later appearing in the case file and an attachment to the statement of reasons deleted lease C-17152 and replaced it with C-17426 (Sept. 30, 1983). Of these leases, the working interest in C-11908, C-16010, C-16012, C-16339, C-19016, C-21138, C-21777, and C-22422 were owned 100 percent by parties other than appellant. The remaining leases were leased in part by Jack or Celeste Grynberg.

under the unit plan prior to expiration of the lease. 4/ 30 U.S.C. § 226(j) (1982); 43 CFR 3107.3-1. However, a lease committed to a unit agreement will expire at the end of its primary term where no actual drilling operations are in progress or production exists on the lease or within the unit over the expiration date. Aquarius Resources Corp., 64 IBLA 153 (1982); 43 CFR 3107.1.

The record does not disclose that drilling operations have been pursued anywhere within the proposed unit. The proponents of the unit have previously relied upon the presence of an existing shut-in well to support arguments of satisfactory compliance with the prerequisites for lease extension. See April 28, 1980, appeal to Director, Survey, at 3. But this argument fails because the unit agreement presented to Survey for final approval requires completion of a qualifying well on unit lands subsequent to the effective date of the unit agreement. Energy Trading Inc., 50 IBLA 9 (1980), aff'd sub nom. Burton/Hawks, Inc. v. United States, 553 F. Supp. 86, 90-91 (D. Utah 1982).

Appellant argues that the Federal oil and gas leases in the Steer Unit were suspended when appeals were filed with the Director, Survey, and were consequently immune from expiration during the period of appellate review. However, in the absence of action by the lessee to cause the term of these leases to be extended, a suspension of the effect of the decision to reject the unit agreement cannot extend the leases proposed to be committed to the unit.

4/ A unit agreement is a contract between the United States and participating parties for joint development and operation of an oil and gas field where substantial amounts of public lands are involved. The regulations governing procedures for forming a unit may be found at 43 CFR Part 3180 (formally codified at 30 CFR Part 260 (1980)). See also BLM Manual, H-3108 (Handbook). A unit plan may be adopted for an unproven oil and gas field considered suitable for exploration and operation as a unit. Cf. 43 CFR 3105.2 (Communitization or pooling plan). After a proposal to unite the owners of any right, title, or interest in oil and gas deposits within the specified area has been accepted by the Department, it is incumbent upon the parties endorsing the plan to seek to obtain joinder to the unit agreement from all parties having mineral interests therein, who are lessees of record, owners of overriding royalty interests, and owners of working interests. A model unit agreement acceptable to the Department was provided for proponents of a unit at 30 CFR 226.12 (1980). See also 43 CFR 3186.1. Commitment of the mineral resources to the unit is accomplished by ratifying or signing the unit agreement. The ratified agreement is submitted to the Department as an application for final approval. 43 CFR 3183.3; 30 CFR 226.9(d) (1980). Although all parties having mineral interests in the specified area must be invited to join the agreement, the Department recognizes some may refuse the invitation. See 43 CFR 3181.3; 30 CFR 226.5 (1980). A unit agreement, however, will not be approved unless the parties signing the agreement hold sufficient interest in the resources of the unit area to provide reasonably effective control of operations. 43 CFR 3183.3-1; 30 CFR 226.8 (1980). It is the policy of the Department that a unit is not effective until the unit agreement is approved in final form by the authorized official. See 30 CFR 226.12 (1980) (43 CFR 3186.1), Model Agreement, item 20; BLM Manual, H-3180-1.II.C.13; 48 FR 26766 (June 10, 1983).

Section 39 of the Mineral Leasing Act, 30 U.S.C. § 209 (1982), empowers the Secretary with discretionary authority to suspend by order, in the interest of conservation, operation and production requirements for an oil and gas lease and thereby extend the term of the lease. Under Departmental regulation a lessee must file in the proper office an application for such relief in triplicate before an order pursuant to the statutory provision will be considered. 43 CFR 3103.4-2; 43 CFR 3103.3-8 (1980). See Jones-O'Brien, 85 I.D. 89 (1978). This Department has long held that where a lessee makes application for a lease suspension the Secretary (or his delegate) is under no obligation to suspend; he may do so in his informed discretion after making the necessary finding that a suspension is in the interest of conservation. Sierra Club (On Judicial Remand), 80 IBLA 251, 262 (1984); Jones-O'Brien, supra at 91. An informal request to suspend lease responsibilities for all the leases involved during pendency of the Department's review of the unit agreement was presented in the closing paragraph of the application for final approval and was renewed in an appeal to the Director, Survey. Besides lacking the formalities prescribed by regulation, the request did not present reasons predicated upon issues of conservation which would justify application of the discretionary authority to grant the suspension in this case.

In Copper Valley Machine Works, Inc. v. Andrus, 653 F.2d 595 (D.C. Cir. 1981), the court introduced the concept of a resulting suspension of an oil and gas lease, where a lessee was precluded by Secretarial Order from pursuing development and operations for substantial periods, finding the Department's drilling restrictions were tantamount to an order suspending the lease. Id. at 604. The court determined the lessee was entitled to an extension of the lease comparable to the period of required suspension of operations. Id. at 605. In William C. Kirkwood, 81 IBLA 204 (1984), the lessee was denied an application for a permit to drill. The Board opinion postulated that considerable delays by BLM in performing its functions could possibly be construed as an effective suspension of the lease. A delay by BLM in reviewing the untimely application in that case, however, was not considered to preclude development, and a finding the oil and gas lease at issue had expired was affirmed. Considering the result of these two decisions, the question here to be resolved is whether the Department's delay in handling the appeal filed under 30 CFR Part 290 constituted "an order suspending the leases" because the lessees were precluded from satisfying lease requirements.

The decision reviewed by the Director concerned denial of the unit plan and not a declaration of lease requirements. By appealing the rejection of the unit plan, final unit approval remained a possibility. However, the pendency of an appeal before the Director or the Board on this distinct issue did not excuse the lessees from responsibility to maintain the leases in conformance with the statutes, regulations, and the terms of the leases. See Goldie Skodras, 72 IBLA 120, 123 (1983); Tenneco Oil Co., 44 IBLA 171 (1979). The statutory requirement of achieving development or production before the end of the primary term of the lease must be satisfied for each oil and gas lease which has not been suspended by order to the Secretary. The fact that this obligation must be achieved for each lease has no relevance to whether or not it is included within an approved unit plan except for the evident advantage a tract committed to the plan has with respect to

easier satisfaction of the statutory requirement through benefit of development or production elsewhere in the unit area. Thus, lack of an approved unit agreement will not itself operate to bar a lessee from fulfilling lease responsibilities. Here, there is no factual basis for a finding that actions by the Department operated to prevent appellant from developing his leases and as a result amounted to a suspension of the leases.

As stated previously, a lease will expire at the end of its primary term absent current drilling operations or a producing well attributable to it or suspension by order or by action of the Department. Since, other than the lease with the shut-in well, there has been no activity on any of the leases within the unit or suspension of the lease requirements which would have extended their primary terms, it must be concluded they have expired by operation of law. As a consequence, the subject of this appeal, approval of the proposed unit agreement, is made moot. There is no purpose for this Board to consider the merits of a proposed unit agreement where the oil and gas leases involved have all expired.

Finally, we note the record also shows oil and gas leases C-10199, C-10362, C-10791, and C-10791-A were scheduled to expire on February 29 and April 30, 1980, or before Survey even received the documents necessary to include those leases within the proposed unit. Pursuant to 43 CFR 3103.3-8, Jack Grynberg and Associates formally applied for suspension of those four leases, together with C-10788, C-10789, and C-11093, which were scheduled to expire on May 31, and June 30, 1980. By Survey decision dated March 31, 1980, suspension of the identified leases was denied. This decision was also appealed pursuant to 30 CFR Part 290 (1980). On appeal, the Acting Chief, Conservation Division, Survey, acting for the Director, determined there was a failure to show sufficient reasons for granting the application for suspension of operations and production. See Decision, GS-172-O&G (Feb. 11, 1981). Although the decision was appealable to the Board of Land Appeals, no appeal was taken. Where an administrative officer has acted within his jurisdiction and review of such action has not been sought on a timely basis, the principles of estoppel, laches, and res judicata merge in the doctrine of finality of administrative action and operate to bar appellant's claim for relief. Ida Mae Rose, 73 IBLA 97, 99-100 (1983); Union Oil Company of California, 71 I.D. 169, 181 (1964). Accordingly, appellant's arguments with respect to suspension of oil and gas leases C-10199, C-10362, C-10788, C-10789, C-10791, C-10791-A, and C-11093 are rejected as beyond the jurisdiction of this Board to review.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Franklin D. Arness
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge